

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KOUJI HIRAYAMA and MICHIO NAKA

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Appeal No. 2006-1420  
Application No. 09/933,000

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HEARD: June 6, 2006

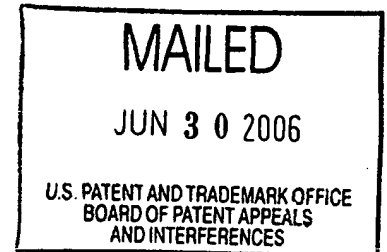
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Before KIMLIN, JEFFREY T. SMITH, and FRANKLIN Administrative Patent  
Judges.

JEFFREY T. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 11 to 17, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 134.



### BACKGROUND

The present invention relates a test apparatus for assaying a component in a liquid sample. According to Appellants, the test apparatus of the present invention can be used with liquid samples, such as whole blood. (Brief, p. 2).

Representative claim 11, as presented in the brief, appears below:

11. A test apparatus for assaying a component in a liquid sample by measuring a reflected light, comprising:
- a support defining an upper side and a lower side and having one of a through hole and a light permeable area,
  - a reagent layer defining an upper side and a lower side and having a detecting area, the reagent layer being fixed on the upper side of the support to cover one of the through hole and light permeable area, and
  - a cover including a lower side facing the reagent layer and which covers at least the detecting area,
- wherein at least a portion of said cover covering the detecting area is black; and
- wherein said reflected light is measured from the lower side of both the reagent layer and the cover.

In addition to the prior art cited on page 3 of the specification, the Examiner relies on the following references in rejecting the appealed claims:

Japanese Publication (JP '065) <sup>1</sup>	JP 188065	Jul. 06, 1972
Eastman Kodak Company (European Patent Publication)	EP 0587222	Mar. 16, 1994

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<sup>1</sup> We will rely on the English language translation of this document that has been provided in the present record.

### GROUND OF REJECTION

Claims 11 to 17 stand rejected under 35 U.S.C. § 103(a) as obvious over JP '065 in view of EP '222.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Answer (mailed September 29, 2005) for the Examiner's reasoning in support of the rejections, and to the Briefs (filed March 1, 2004 and July 2, 2004) for the Appellants' arguments there against.

### OPINION

Upon careful review of the respective positions advanced by Appellants and the Examiner, we affirm the rejection of claims 11 to 17 for the reasons expressed in the Answer and add the following for emphasis.

Appellants' arguments for patentability are not persuasive. Appellants have chosen to not address the Examiner's basic position that it would have been obvious to modify the cover of the test apparatus of JP '065 to have a black color. Instead, Appellants' arguments focus on the differences between the EP '222 reference and the claimed invention. It is not disputed that JP '065 discloses a test apparatus for assaying a component in a liquid sample by measuring a reflected light. The recognized distinguishing feature between the apparatus of JP '065 and the claimed invention is the color of the cover (5). The claimed invention specifies the color is black while JP '065 is silent. The present

invention and the test apparatus of JP '065 measure the samples through the use of reflective light.

A person of ordinary skill in the art would have recognized that the structural components of a reflective test apparatus should be designed to achieve optimal results and comprise components that would not interfere with the results achieved by the device. EP '222 is evidence that a person of ordinary skill in the art would have recognized that the color of the structural components of a test apparatus adjacent to a light detecting (read) area could interfere with the test values achieved by the apparatus. (Page 6, ll. 34-53). That is, the color/materials of the frame and cover should be designed not to increase interferences (reflected light) that would interfere with the operation of the test apparatus. Thus, a person of ordinary skill in the art would have reasonably expected that the color black, which absorbs light and reduces interference with the read area, would have been suitable for the cover of the JP '065 test apparatus.

Appellants' arguments regarding claims 13-15 are not persuasive. JP '065 discloses the height of the cover can be adjusted to a predetermined height as needed. (JP '065, translation page 5). As such, the adjustment of the height of the cover, including to the point of contact with the reagent layer, would have been obvious to a person of ordinary skill in the art.

## TIME FOR TAKING ACTION

**Affirmed**

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) **BOARD OF PATENT**  
) **APPEALS**  
) **AND**  
) **INTERFERENCES**

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